



Handwritten initials: JAW AF

PATENT

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In Re Patent Application of:

Inventor(s) : Giffin, et al.
Filed : June 25, 2001
Serial No. : 09/891,005
Confirmation No. : 9424
Group Art Unit : 2141
Examiner : Nguyen, Quang N.
Docket Number : SNY-P4260
Title : Wireless Streaming Audio System

Mail Stop Appeal Brief - Patents
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Registration No. 30,779

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Please Send Correspondence to:

Miller Patent Services
2500 Dockery Lane
Raleigh, NC 27606
Phone: (919) 816-9981
Fax: (919) 816-9982

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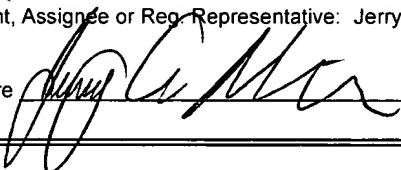
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Signature 	Date <u>12/12/2005</u>

APPEAL BRIEF

This appeal brief is submitted in **triplicate** in response to the Office Action dated November 2, 2005. Reconsideration and allowance of all claims at issue are respectfully requested.

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Serial No.: 09/891,005

REAL PARTY IN INTEREST

The real parties in interest in this appeal are the assignees of this application - Sony Corporation and Sony Electronics, Inc.

RELATED APPEALS AND INTERFERENCES

None known to the undersigned.

STATUS OF CLAIMS

Claims 1-20, 29 and 30 are pending in this application, currently stand rejected and constitute the subject of this appeal. Claims 21-28 have been cancelled. Claims 1-2, 9-10 and 15-16 are rejected based upon 35 U.S.C. §102(e) as being anticipated by Rhodes (U.S. Pat. No. 6,311,214). Claims 3-8, 11-14, 17-20 and 29-30 are rejected under 35 U.S.C. §103(a) as being unpatentable over Rhodes in view of Kurihara et al. (U.S. Pat. Application No. 2002/0023101 A1 – Kurihara hereinafter).

STATUS OF AMENDMENTS FILED SUBSEQUENT TO FINAL REJECTION

No amendments have been filed subsequent to Final Rejection.

SUMMARY OF CLAIMED SUBJECT MATTER

The following summary is supplied in compliance with the requirements of the appeal rules. The undersigned wishes to note that this summary is provided merely as an aid to the Board in rapidly understanding the invention and the issues relating to this appeal and do not supersede what the claims actually state (69 Fed. Reg. 155 (Aug., 2004)). As such, these summaries should not be construed to limit the invention in any way. References to specific figures, reference numbers and text passages are to be considered only as examples.

Summary of Claim 1:

Claim 1 defines a method, comprising: storing a music file representing a musical selection (Fig. 2, 228) for a first user; mapping the first user to the music file (page 5, line 30 –

page 6, line 8); mapping other users who wish to store the musical selection to the music file (page 5, line 30 – page 6, line 8); receiving a request (244) from any of the mapped users for playback of the music file; and transmitting the music file to the user that sent the request for playback, using wireless transmission, as a streaming music file (252).

Summary of claim 2:

The method according to claim 1, further comprising: receiving from the first user a request to store the music file; and wherein the storing is carried out as a response to the request to store the music file (Fig. 2, 220, 224, 228).

Summary of claim 3:

The method according to claim 1, further comprising paying a royalty for use of the music file (Fig. 2, 264).

Summary of claim 4:

The method according to claim 1, further comprising charging each of the users mapped to the music file a fee for storage of the music file (Fig. 2, 234).

Summary of claim 5:

The method according to claim 1, further comprising charging the user that sent the request for playback a fee for transmitting the music file to the user that sent the request for playback (Fig. 2, 264; page 6, lines 3-8).

Summary of claim 6:

The method according to claim 1, further comprising uploading the music file from the first user prior to the storing (Fig. 2, 228).

Summary of claim 7:

The method according to claim 1, further comprising obtaining the music file from a commercial music source prior to the storing (Fig. 2, 228).

Summary of claim 8:

The method according to claim 7, further comprising paying a royalty for use of the music file (Fig. 2, 264; page 6, lines 3-8).

Summary of claim 9:

Claim 9 specifies an electronic storage medium (108, 124) storing instructions which, when executed on a programmed processor (124), carry out a method that parallels claim 1.

Summary of claim 10:

The electronic storage medium according to claim 9, further comprising: receiving from the first user a request to store the music file; and wherein the storing is carried out as a response to the request to store the music file (Fig. 2, 220, 224, 228).

Summary of claim 11:

The electronic storage medium according to claim 9, further comprising charging each of the users mapped to the music file a fee for storage of the music file (Fig. 2, 234).

Summary of claim 12:

The electronic storage medium according to claim 9, further comprising charging the user that sent the request for playback a fee for transmitting the music file to the user that sent the request for playback (Fig. 2, 264; page 6, lines 3-8).

Summary of claim 13:

The electronic storage medium according to claim 9, further comprising uploading the music file from the first user prior to the storing (Fig. 2, 228).

14. The electronic storage medium according to claim 9, further comprising obtaining the music file from a commercial music source prior to the storing (Fig. 2, 228).

Summary of claim 15:

Claim 15 specifies a data center (108), comprising: a content server (124) that stores music files for a plurality of users (page 6, lines 1-7); (Data center 108 incorporates a programmed processor forming a part of server 124 that carries out the actions described) means for mapping a first user to the music file (page 5, line 30 – page 6, lines 9-12); means for mapping other users who wish to store the musical selection to the music file (page 5, line 30 – page 6, line 12); means for receiving a request from the first user for playback of the music file (Fig. 2, 224, and in Fig. 1 the request is received at the data center 108 via the path from 110 to 308 to 130 to 136 and to 108); and means for transmitting the music file to the first user for playback, using wireless transmission, as a streaming music file (Fig. 2, 252, and in Fig. 1 the music file is streamed from the data center 108 via the path from 108 to 136 to 130 to 308 and to 110).

Summary of claim 16:

The data center according to claim 15, wherein the means for receiving further comprises: means for receiving from the first user a request to store the music file; and wherein the storing is carried out as a response to the request to store the music file (Page 6, lines 9-12; Fig. 2, 220, 224, 228).

Summary of claim 17:

The data center according to claim 15, further comprising means for charging each of the users a fee for storage of the music file (Page 6, lines 9-12; Fig. 2, 234).

Summary of claim 18:

The data center according to claim 15, further comprising means for charging the first user a fee for transmitting the music file to the first user (Fig. 2, 264; page 6, lines 3-12).

Summary of claim 19:

The data center according to claim 15, further comprising means for uploading the music file from the first user prior to the storing (Page 6, lines 9-12; Fig. 2, 228).

Summary of claim 20:

The data center medium according to claim 15, further comprising means for obtaining the music file from a commercial music source prior to the storing (Page 6, lines 9-12; Fig. 2, 228).

Summary of claim 29:

Claim 29 calls for a method for efficiently storing music files at a data center, comprising: receiving from a first user a request to store a music file representing a musical selection (Fig. 2, 220, 224); responsive to receipt of the request, obtaining the music file from a commercial music source and storing the music file representing the musical selection for the first user (Fig. 2, 228); paying a royalty to the commercial music source for the music file (page 5, lines 26-30); mapping the first user to the music file (page 5, line 30 – page 6, line 8); receiving a request from a second user to store the music file representing the musical selection (Fig. 2, 220, 224); responsive to the request from the second user to store the music file representing the musical selection, mapping second user to the music file (Fig. 2, 220, 224; page 6, lines 3-7); charging the first and second users mapped to the music file a fee for storage of the music file (Fig. 2, 234); receiving a request from either one of the mapped users for playback of the music file (Fig. 2, 248); transmitting the music file to the user that sent the request for playback, using wireless transmission, as a streaming music file (Fig. 2, 252); charging the user that sent the request for playback a fee for transmitting the music file to the user that sent the request for playback (Fig. 2, 264; page 6, lines 3-8).

Summary of claim 30:

Claim 30 calls out a data center for efficiently storing music files, comprising: a content server (108) that stores music files for a plurality of users (page 6, lines 1-7); (Data center 108 incorporates a programmed processor forming a part of server 124 that carries out the actions described); means for receiving from a first user a request to store the music file (Fig. 2, 224, and in Fig. 1 the request is received at the data center 108 via the path from 110 to 308 to 130 to 136 and to 108); wherein the storing is carried out as a response to the request to store the music file from a first user (Fig. 2, 220, Page 6, lines 9-12); means for uploading the music file from the first user prior to the storing in the event the user wishes to upload the music file (Page 6, lines 9-12; Fig. 2, 228); means for obtaining the music file from a commercial music source in the event the first user wishes for the data center to obtain a copy of the music file (Page 6, lines 9-12; Fig. 2, 228); means for payment of a royalty for storage of the music file (Fig. 2, 234); means for mapping the first user to the music file (page 5, line 30 – page 6, line 12); wherein the mapping means maps other users who wish to store the musical selection to the music file (page 5, line 30 – page 6, line 12); means for charging each of the mapped users a fee for storage of the music file (Fig. 2, 234; page 6, lines 9-12); means for receiving a request from any of the users for playback of the music file (Fig. 2, 244; page 6, lines 9-12); means for transmitting the music file to the first user for playback, using wireless transmission, as a streaming music file (Fig. 2, 252, and in Fig. 1 the music file is streamed from the data center 108 via the path from 108 to 136 to 130 to 308 and to 110); means for charging the first user a fee for transmitting the music file to the first user (Fig. 2, 264; page 6, lines 3-8).

GROUND OF REJECTION TO BE REVIEWED ON APPEAL

1. The rejection of claims 1-2, 9-10 and 15-16 as anticipated by Rhodes.
2. The rejection of claims 4, 11, 17, 29 and 30 as obvious over Rhodes in view of Kurihara.
3. The rejection of claims 3, 5-7, 12-14 and 18-20 as obvious over Rhodes in view of Kurihara.

GROUPING OF CLAIMS

The claims are grouped as:

- Group 1: Claims 1-2, 9-10 and 15-16.
- Group 2: Claims 4, 11, 17, 29 and 30.
- Group 3: Claims 3, 5-7, 12-14 and 18-20.

ARGUMENTS

Arguments Regarding Group 1:

The claims of Group 1 are rejected as anticipated by Rhodes. Appellants note the following authorities: "To anticipate a claim, the reference must teach every element of the claim" (MPEP 2131). The identical invention must be shown in as complete detail as is contained in the ... claim." *Richardson v. Suzuki Motor Co.*, 868 F.2d 1226, 1236, 9 USPQ2d 1913, 1920 (Fed. Cir. 1989). "A claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference." *Verdegaal Bros. v. Union Oil Co. of California*, 814 F.2d 628, 631, 2 USPQ2d 1051, 1053 (Fed. Cir. 1987). "The prior art must be enabling." *Rockwell Int'l Corp. v. United States*, 147 F.3d 1358, 47 USPQ2d 1027, 1032 (Fed. Cir. 1998).

Paragraphs 4-7 of the Final Office Action of Nov. 2, 2005 summarizes the Examiner's position. Appellant submits that Rhodes fails to teach and fails to enable the two "mapping" actions of claims 1 and 9, or the "means for mapping a first user" and "means for mapping other users" to a music file as called out in the claims (i.e., mapping multiple users to a single music file). The Office Action quotes Rhodes at column 46, lines 42-45 in support of his position. The cited portion of Rhodes states in its entirety:

"... In most installations, the library is physically located at the user's residence, but could be remotely sited, e.g., consolidated with the music libraries of other users at a central location."

The Office Action apparently submits that this statement is adequate to anticipate, to paraphrase without intent of limitation, mapping multiple users who wish to store a particular musical selection to a single music file. Appellants respectfully disagree.

Taken in context, the term “library” in this quote refers to is the user’s “personal music library” (e.g., col. 46, line 36) which is characterized as being stored in a “predetermined location” such as the user’s own computer (col. 46, line 29). In all cases, the user’s “personal music library” is dealt with as an independent entity controlled fully by the user. The only discussion of such a library implies, if anything, a one-to-one relationship between the user and his personal library. In context, the cited passage merely states that the library can be stored either at the user’s own computer or at another location along with other libraries. In this sense, it is believed clear that the term “consolidated” merely means stored at the same location as other libraries. The undersigned is unable to find any teaching or suggestion that there exists any sort of mapping of multiple users to a single musical selection as called for by the claims of Group 1. The mere statement that multiple libraries can be stored in the same location falls short of teaching or suggesting the required mapping as called out in the claims. Moreover, the statement falls short of enabling the claimed mapping of multiple users to a single music file.

As noted above, anticipation requires that each and every claim limitation be met by a single reference, and each word of the claim must be considered. As explained, Rhodes fails to meet the claim language relating to mapping of multiple users to a single music selection. In view of this failure of Rhodes, the claims of Group 1 are submitted to be allowable.

Arguments Regarding Group 2:

The claims of Group 2 stand rejected as obvious over Rhodes in view of Kurihara. In each case, except claims 29 and 30, the claims of Group 2 are dependent on the claims of Group 1. Appellants note the following authorities: “The examiner bears the initial burden of factually supporting any *prima facie* conclusion of obviousness. If the examiner does not produce a *prima facie* case, the applicant is under no obligation to submit evidence of nonobviousness.” (MPEP 2142) “The Prior Art must suggest the desirability of the claimed invention.” (MPEP 2143.01 I) “All claim limitations must be taught or suggested.” (MPEP 2143.03) “To establish *prima facie* obviousness of a claimed invention, all the claim limitations must be taught or suggested by the prior art.” *In re Royka*, 490 F.2d 981, 180 USPQ 580 (CCPA 1974). “All words in a claim must be considered in judging the patentability of that claim against the prior art.” *In re Wilson*, 424

F.2d 1382, 1385, 165 USPQ 494, 496 (CCPA 1970). “If an independent claim is nonobvious under 35 U.S.C. 103, then any claim depending therefrom is nonobvious. *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988). “To render a later invention unpatentable for obviousness, the prior art must enable the later invention”. *In re Kumar* (No 04-1074, CAFC 2005).

The Rhodes Reference:

Rhodes is cited as the main reference in this rejection. Rhodes is used for the same reasons that Rhodes is used against Group 1. For all of the reasons cited above in connection with Group 1, Rhodes is submitted to fall short of the disclosure alleged in the Final Rejection. As such (and by virtue of their dependency of claims 4, 11 and 17 upon the claims of Group 1 which are submitted to be allowable), the claims of Group 2 are submitted to be allowable.

The Kurihara Reference:

The Office Action cites Kurihara as teaching that a fee can be paid for storage and transmission of the stored data. Each claim of Group 2 calls for “charging each of the mapped users a fee for storage of the music file” or similar language. Kurihara in fact teaches that “the content management company will charge the user corresponding to the size of the user area 18” (paragraph 0045). It is noted that there is no teaching or suggestion that multiple users can share a music file, and no teaching or suggestion of charging the users for storage of such a file. In fact, the teachings of Kurihara would lead one of ordinary skill in the art away from Appellant’s claimed invention. Since Kurihara teaches that fees are charged based upon the size of the user area 18, sharing of files among multiple users would appear to result in lower fees earned by the content management company. Additionally, at paragraph 0047, Kurihara teaches that users are prohibited from accessing user areas assigned to other users – there is no teaching, hint or suggestion of any shared storage space. Hence, not only are the claim limitations not met, the Kurihara reference teaches away from Appellant’s claimed invention. Hence, the claims of Group 2 are submitted to be allowable.

The Kurihara reference is also used for its alleged teaching that the purchasing process can be a linking process (paragraphs 0050 – 0052). While the term “linking” is used in these paragraphs, it is unclear what is meant by the term, since no explanation is offered in Kurihara.

The only enabling teaching as to the actual process carried out by Kurihara is that it is a copying process, and it can therefore only be presumed that the linking is a process for connecting to the source for effecting the copying. This is reinforced by, for example, the last sentence of paragraph 0051, the last sentence of paragraph 0052, the second sentence of paragraph 0053 and the first sentence of paragraph 0055. It is submitted that a positive statement that the files are copied in four of five paragraphs adjacent the paragraphs cited by the examiner can only suggest that the only process being discussed is one of copying. Thus, it is submitted that the asserted teachings of Kurihara are not in fact adequate to support the present rejection. Hence, the claims of Group 2 are submitted to be allowable.

The combination of Rhodes and Kurihara:

The Final Office Action makes the combination of Rhodes and Kurihara without providing a reasoned explanation as to why one of ordinary skill in the art would be motivated to make the claimed combination. Absent such motivation, *prima facie* obviousness cannot be established. Hence, the claims of Group 2 are submitted to be allowable.

Arguments Regarding Group 3:

The claims of Group 3 stand rejected as obvious over Rhodes in view of Kurihara. In each case, the claims of Group 3 are dependent on the claims of Group 1. Appellants note the following authorities: "The examiner bears the initial burden of factually supporting any *prima facie* conclusion of obviousness. If the examiner does not produce a *prima facie* case, the applicant is under no obligation to submit evidence of nonobviousness." (MPEP 2142) "The Prior Art must suggest the desirability of the claimed invention." (MPEP 2143.01) "All claim limitations must be taught or suggested." (MPEP 2143.03) "To establish *prima facie* obviousness of a claimed invention, all the claim limitations must be taught or suggested by the prior art." *In re Royka*, 490 F.2d 981, 180 USPQ 580 (CCPA 1974). "All words in a claim must be considered in judging the patentability of that claim against the prior art." *In re Wilson*, 424 F.2d 1382, 1385, 165 USPQ 494, 496 (CCPA 1970). "If an independent claim is nonobvious under 35 U.S.C. 103, then any claim depending therefrom is nonobvious. *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988). "To render a later invention unpatentable for

obviousness, the prior art must enable the later invention”. *In re Kumar* (No 04-1074, CAFC 2005). “References that teach away cannot serve to create a prima facie case of obviousness.” *McGinley v. Franklin Sports Inc.*, 262 F.3d 1339, 60 USPQ2d 1001, 1010 (Fed. Cir. 2001).

The Rhodes Reference:

Rhodes is cited as the main reference in this rejection for the same reasons that Rhodes is used against Group 1. For all of the reasons cited above in connection with Group 1, Rhodes is submitted to fall short of the disclosure alleged in the Final Rejection. As such, and by virtue of their dependency upon the claims of Group 1 which are submitted to be allowable, the claims of Group 3 are submitted to be allowable.

The Kurihara Reference:

The Kurihara reference is used for various teachings including its alleged teaching that the purchasing process can be a linking process (paragraphs 0050 – 0052). While the term “linking” is used in these paragraphs, it is unclear what is meant by the term, since no explanation is offered in Kurihara. The only enabling teaching as to the actual process carried out by Kurihara is that it is a copying process, and it can therefore only be presumed that the linking is a process for connecting to the source for effecting the copying. This is reinforced by, for example, the last sentence of paragraph 0051, the last sentence of paragraph 0052, the second sentence of paragraph 0053 and the first sentence of paragraph 0055. It is submitted that a positive statement that the files are copied in four of five paragraphs adjacent the paragraphs cited by the examiner can only suggest that the only process being discussed is one of copying. Thus, it is submitted that the asserted teachings of Kurihara are not in fact viable evidence to support the present rejection. Hence, the claims of Group 3 are submitted to be allowable.

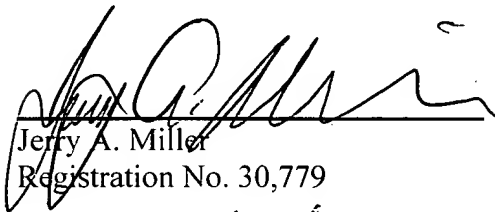
The combination of Rhodes and Kurihara:

The Final Office Action makes the combination of Rhodes and Kurihara without providing a reasoned explanation as to why one of ordinary skill in the art would be motivated to make the claimed combination. Absent such motivation, *prima facie* obviousness cannot be established. Hence, the claims of Group 3 are submitted to be allowable.

Concluding Remarks:

In view of the above arguments, Appellants respectfully submit that all claims are allowable over the cited art. Reversal of all rejections by the Board of Appeals and Interferences is respectfully requested.

Respectfully submitted,


Jerry A. Miller
Registration No. 30,779

Dated: 12/12/2005

Please Send Correspondence to:
Miller Patent Services
2500 Dockery Lane
Raleigh, NC 27606
Phone: (919) 816-9981
Fax: (919) 816-9982
Customer Number 24337

CLAIMS APPENDIX

1. (Previously Presented) A method, comprising:
 - storing a music file representing a musical selection for a first user;
 - mapping the first user to the music file;
 - mapping other users who wish to store the musical selection to the music file;
 - receiving a request from any of the mapped users for playback of the music file; and
 - transmitting the music file to the user that sent the request for playback, using wireless transmission, as a streaming music file.
2. (Previously Presented) The method according to claim 1, further comprising:
 - receiving from the first user a request to store the music file; and
 - wherein the storing is carried out as a response to the request to store the music file.
3. (Previously Presented) The method according to claim 1, further comprising paying a royalty for use of the music file.
4. (Previously Presented) The method according to claim 1, further comprising charging each of the users mapped to the music file a fee for storage of the music file.
5. (Previously Presented) The method according to claim 1, further comprising charging the user that sent the request for playback a fee for transmitting the music file to the user that sent the request for playback.
6. (Previously Presented) The method according to claim 1, further comprising uploading the music file from the first user prior to the storing.
7. (Original) The method according to claim 1, further comprising obtaining the music file from a commercial music source prior to the storing.

8. (Original) The method according to claim 7, further comprising paying a royalty for use of the music file.

9. (Previously Presented) An electronic storage medium storing instructions which, when executed on a programmed processor, carry out a method, comprising:

- storing a music file representing a musical selection for a first user;
- mapping the first user to the music file;
- mapping other users who wish to store the musical selection to the music file;
- receiving a request from any of the mapped users for playback of the music file; and
- transmitting the music file to the user that sent the request for playback, using wireless transmission, as a streaming music file.

10. (Previously Presented) The electronic storage medium according to claim 9, further comprising:

- receiving from the first user a request to store the music file; and
- wherein the storing is carried out as a response to the request to store the music file.

11. (Previously Presented) The electronic storage medium according to claim 9, further comprising charging each of the users mapped to the music file a fee for storage of the music file.

12. (Previously Presented) The electronic storage medium according to claim 9, further comprising charging the user that sent the request for playback a fee for transmitting the music file to the user that sent the request for playback.

13. (Previously Presented) The electronic storage medium according to claim 9, further comprising uploading the music file from the first user prior to the storing.

14. (Original) The electronic storage medium according to claim 9, further comprising obtaining the music file from a commercial music source prior to the storing.

15. (Previously Presented) A data center, comprising:

- a content server that stores music files for a plurality of users;
- means for mapping a first user to the music file;
- means for mapping other users who wish to store the musical selection to the music file;
- means for receiving a request from the first user for playback of the music file; and
- means for transmitting the music file to the first user for playback, using wireless transmission, as a streaming music file.

16. (Previously Presented) The data center according to claim 15, wherein the means for receiving further comprises:

- means for receiving from the first user a request to store the music file; and
- wherein the storing is carried out as a response to the request to store the music file.

17. (Previously Presented) The data center according to claim 15, further comprising means for charging each of the users a fee for storage of the music file.

18. (Previously Presented) The data center according to claim 15, further comprising means for charging the first user a fee for transmitting the music file to the first user.

19. (Previously Presented) The data center according to claim 15, further comprising means for uploading the music file from the first user prior to the storing.

20. (Previously Presented) The data center medium according to claim 15, further comprising means for obtaining the music file from a commercial music source prior to the storing.

21.-28. (Cancelled)

29. (Previously Presented) A method for efficiently storing music files at a data center, comprising:

- receiving from a first user a request to store a music file representing a musical selection;
- responsive to receipt of the request, obtaining the music file from a commercial music source and storing the music file representing the musical selection for the first user;

- paying a royalty to the commercial music source for the music file;

- mapping the first user to the music file;

- receiving a request from a second user to store the music file representing the musical selection;

- responsive to the request from the second user to store the music file representing the musical selection, mapping second user to the music file;

- charging the first and second users mapped to the music file a fee for storage of the music file;

- receiving a request from either one of the mapped users for playback of the music file;

- transmitting the music file to the user that sent the request for playback, using wireless transmission, as a streaming music file;

- charging the user that sent the request for playback a fee for transmitting the music file to the user that sent the request for playback.

30. (Previously Presented) A data center for efficiently storing music files, comprising:

- a content server that stores music files for a plurality of users;

- means for receiving from a first user a request to store the music file;

- wherein the storing is carried out as a response to the request to store the music file from a first user;

- means for uploading the music file from the first user prior to the storing in the event the user wishes to upload the music file;

- means for obtaining the music file from a commercial music source in the event the first user wishes for the data center to obtain a copy of the music file;

means for payment of a royalty for storage of the music file;
means for mapping the first user to the music file;
wherein the mapping means maps other users who wish to store the musical selection to the music file;
means for charging each of the mapped users a fee for storage of the music file
means for receiving a request from any of the users for playback of the music file;
means for transmitting the music file to the first user for playback, using wireless transmission, as a streaming music file;
means for charging the first user a fee for transmitting the music file to the first user.

EVIDENCE APPENDIX

Not Applicable.

RELATED PROCEEDINGS APPENDIX

Not Applicable.